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Supreme Court of the United States

October Term, 1977

No. 76-1835

IKE SLODOV,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF OF PETITIONER

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Respondent, at pages 2 and 3 of its Brief, states as follows:

> "Deposits were made into the corporate checking accounts during the week of February 3, 1969, so that from February 6, 1969, through February 9, 1969, the balance in the accounts ranged between $130,000 and $150,000 (Joint Ex. 3). While under petitioner's control, the corporations continued to have current operating receipts totaling or exceeding $100,000 per week. Petitioner used these funds in part to pay some of the outstanding employment taxes due the government. However, it is undisputed that petitioner used the remaining part of the funds to pay employees, rent, utilities and other creditors. Petitioner also reimbursed himself for several advances he had made to the corporations (R. 20, 57; Tr. 179, 181, 239, 348-349, 403-407)."

It should be noted that the expenditures to which Respondent refers were, in most part, if not entirely, in satisfaction of obligations for then current operating expenses. Many creditors insisted on a C. O. D. policy (A. 42). In fact, the amounts Respondent admits were used in part to pay the Government for employment taxes were on account of then current withholding obligations.

The absurdity of Respondent's position is illustrated by the extreme: If, at the time Petitioner became a responsible officer of the corporation, the unpaid trust fund liability equalled Two Hundred Fifty Thousand Dollars ($250,000.00) (there then being no funds of any amount available) the corporation would be required to pay its first Two Hundred Fifty Thousand ($250,000.00) in gross receipts to the Government lest a responsible officer violate Sections 7501 and 6672. Thus, the corporation could not even pay the employee charged with the responsibility for writing a check to the Government for such unpaid liability without running afoul of Sections 7501 and 6672. Seemingly, under Respondent's theory, the corporation also exposed Petitioner to liability under Sections 7501 and 6672 when it used current receipts to pay current employment taxes due the Government, rather than discharging the obligations for prior withholding liability.

A writ of certiorari should issue to review the judgment and opinion of the Sixth Circuit.

Respectfully submitted,

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